

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE )  
APPLICATION OF QWEST )  
CORPORATION REGARDING RELIEF )  
UNDER SECTION 271 OF THE )  
FEDERAL TELECOMMUNICATIONS )  
ACT OF 1996, WYOMING'S )  
PARTICIPATION IN A MULTI-STATE )  
SECTION 271 PROCESS, AND )  
APPROVAL OF ITS STATEMENT OF )  
GENERALLY AVAILABLE TERMS )

Docket No. 70000-TA-00-599  
(Record No. 5924)

ORDER ON GROUP 3 WORKSHOP ITEMS: EMERGING SERVICES  
(Issued April 3, 2002)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the degree to which Qwest Corporation (Qwest) has successfully addressed issues concerning "emerging services" as it seeks to demonstrate compliance with 47 U.S.C. § 271 and related provisions of the federal Telecommunications Act of 1996 (the federal Act) to obtain a recommendation from the Commission to the Federal Communications Commission (FCC) on whether or not Qwest should be allowed to offer originating in-region interLATA services in Wyoming. The emerging services considered here are a group of important services and related issues which gained importance after the passage of the federal Act and which are critical elements of a fairly and completely opened Qwest local exchange market as envisioned by the federal Act. The major emerging services topic areas are [i] line sharing, [ii] subloop unbundling, [iii] packet switching and [iv] dark fiber. The federal Act, at 47 U.S.C. § 271(c)(2)(B), sets forth criteria for the nature of the access and interconnection Qwest must offer to competitors before it is allowed into the in-region interLATA market in Wyoming. Emerging Services became a part of the above-captioned proceeding as a result of unbundling requirements decided upon by the FCC in its November 5, 1999, UNE Remand Order and its December 9, 1999, Line Sharing Order. We must consider the extent to which Qwest provides fair and open access by local service competitors to emerging services; and we must also determine the extent to which Qwest's Statement of Generally Available Terms (SGAT) for Wyoming, regarding emerging services, provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252 (d) and (f) of the federal Act. The Commission, having reviewed the Report to the Wyoming Public Service Commission in this portion of the proceeding and the written comments and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law and its files concerning both this case and the participants, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. On June 11, 2001, the consultant retained by the states participating in the Qwest Section 271 multi-state compliance proceeding (the Consultant), with the assistance of state commissions staff members, filed with the Commission his Report on Emerging Services (the Workshop Report) giving recommendations to the commissions on the disposition of Group 3 issues in this case.

2. Pursuant to due notice, including our order issued herein on July 13, 2001, the Commission held oral arguments on Group 3 workshop issues beginning at 9:00 a.m. on July 27, 2001, in the Commission's hearing room in Cheyenne, Wyoming. Qwest and the Consumer Advocate Staff appeared through counsel and participated to the extent they deemed necessary in the proceedings. QSI Consulting participated in the proceeding as consultants and advisors to the Commission.

3. Pursuant to due notice, the Commission deliberated the emerging services issues on

September 5, 2001, at its hearing room in Cheyenne, Wyoming, and thereafter directed the preparation of an order consistent with their decision.

4. Regarding Line Sharing, the workshop process resolved six issues (Collocating DSLAMs, Direct connections option, Requiring separate CLEC "MELD" runs, Allowing for direct connection in common areas, Line sharing cost elements, and Line splitting). The Workshop Report left four disputed issues to the Commission for further resolution. These disputed issues were:

- a. Ownership of and access to splitters;
- b. Tying Qwest data service and voice service;
- c. Line sharing over fiber loops; and
- d. Provisioning intervals.

One of the major points of contention regarding line sharing concerned the tying by Qwest of data service and voice service. The Workshop Report characterizes the tying issue as "... Qwest's decision to withdraw from customers its Megabit service where a CLEC uses sharing to provide xDSL services across a loop's high frequency portion. Qwest's policy not to continue to offer its Megabit services when a CLEC captures a customer for voice services gives grounds for concern." Later, the Workshop Report confirmed that the antitrust issue in this situation was not paramount, but that, when the issue is viewed against the correct standard (the federal Act's requirement to open markets and to promote competition in an industry whose infrastructure is dominated by ILECs):

"Qwest should not be considered to be in compliance with public interest requirements as long as it maintains a policy of denying its end users Qwest's own Megabit or xDSL services when it loses a voice customer to a CLEC through line sharing." (Workshop Report, p. 17.)

We likewise find this to be a very serious issue, and we are therefore pleased that Qwest, at the oral arguments in this phase of the Wyoming proceeding, confirmed that the policy of Qwest regarding the tying of voice and data services was no longer applicable to either residential or business customers, the only remaining limitations being the technical limitations caused by the physical makeup of the loop in question. (See, e.g., Transcript of Group 3 oral argument, hereinafter Tr., p. 78.)

5. Regarding Subloop Unbundling, the workshop process resolved seven issues (Subloop definition, Unbundling all loop types, Spectrum restrictions, Subloop ordering information, Rights of way, Dispute resolution, and Copper feeder and fiber subloops). The Workshop Report left seven disputed issues to the Commission for further resolution. These disputed issues were:

- a. Subloop access at MTE terminals;
- b. Requiring LSRs for access to premise wiring at MTEs;
- c. CLEC facility inventories;
- d. Determining ownership of inside wire;
- e. Intervals;
- f. Requirement for Qwest-performed jumpering at MTEs; and
- g. Expanding explicitly available subloop elements.

6. The Workshop Report deferred two issues concerning Subloop Unbundling for determination outside of the Group 3 workshop process, those being Undefined rates, and Pricing for overly broad definitions of subloop categories. Both of these are pricing-specific issues for which an effective "conceptual" treatment in the SGAT through this workshop proceeding would be virtually impossible. We agree that these issues should be deferred and examined in the context of the more general and comprehensive consideration of UNE prices and pricing components in Qwest's TELRIC cost docket now pending before the Commission.

7. Regarding Packet Switching, the workshop process resolved eight issues (Defining packet switching, Defining the condition regarding no CLEC collocation of DSLAMs, Access at any feasible point, Availability of CLEC-specified packet switching options, Limiting access to packet management systems, Separate rate elements for packet switching components, Satisfying the condition relating to DSLAM collocation denial, and Maintenance and repair responsibilities). It left five disputed issues to the Commission for further resolution. These disputed issues were:

- a. Availability of spare copper loops;
- b. Denial of DSLAM collocation;
- c. ICB pricing;
- d. Unbundling conditions as a prerequisite to ordering; and
- e. Line card "plug and play."

8. Regarding Dark Fiber, the workshop process resolved eight issues (Dark fiber forecasts, Access to dark fiber without collocation, Testing, Addition of E-UDF rate elements, Purchase of a single dark fiber strand, Provisioning and ordering processes, Dark fiber at collocation build-out completion, and Cross connect charges). It left four disputed issues to the Commission for further resolution. These disputed issues were:

- a. Affiliate obligations to provide access to dark fiber;
- b. Access to dark fiber in joint build arrangements;
- c. Applying a local exchange usage requirements to dark fiber; and
- d. Consistency with technical publications.

9. Qwest displayed a constructive and positive attitude in its June 22, 2001, Comments to the Commission on the Workshop Report. Qwest, in the final analysis, confirmed its full acceptance of the Workshop Report's findings and recommendations. It lodged no challenges to the Workshop Report and promptly submitted an updated and conforming Wyoming SGAT reflecting the Workshop Report's recommendations and conclusions on Group 3 issues.

10. On the basis of the Wyoming and multi-state record and our consideration of the arguments of the parties to this proceeding, we find that Qwest has shown general compliance with Group 3 workshop issues, subject to the successful completion of the Regional Oversight Committee's independent third party testing of Qwest's Operations Support System (the ROC OSS test) and the Performance Measures Audit as it is associated with Group 3 issues.

11. We believe that the ROC OSS testing process is the proper venue for the resolution of performance issues related to Group 3 items. This does not mean that we believe that any party should be foreclosed from raising issues which the OSS testing process fails to resolve. We remind the parties that the burden carried by a participant seeking to reopen an issue or launch a new issue after the conclusion of the ROC OSS process is very heavy. Subject to these considerations, we find the Workshop Report and the conclusions and issue resolutions contained in it properly balance the interests of the public and carry out the intent of the federal Act. Therefore, we will adopt the Workshop Report's recommendations with regard to Group 3 Emerging Services issues. Any further determination by the Commission on Qwest's satisfaction of the requirements related to Group 3 issues in this proceeding is expressly subject to successful completion of the ROC OSS test, the Performance Measures Audit and to the successful resolution of any issues identified therein which are material to this phase of the workshop process. In accepting the findings, conclusions and recommendations in the Consultant's Workshop Report, we determine that the substantial evidence of record supports our decision.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Qwest shall make any further necessary changes to the terms and conditions of its Statement of Generally Available Terms to comply with this decision as Group 3 issues are clarified by the ROC OSS and Performance Measures Audit processes.

2. Subject to the successful completion of the ROC OSS process and the Performance Measures Audit described hereinabove, and subject to the successful implementation of any corrective measures as identified therein, the Commission is prepared to make a recommendation to the Federal Communications Commission that Qwest is in compliance with regard to Group 3 issues regarding Emerging Services.

3. Further action by the Commission on a final recommendation regarding compliance is subject to the satisfactory resolution of the issues deferred to the ROC OSS testing proceeding and the Performance Measures Audit, and to such further order of the Commission as it shall deem advisable.

4. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on April 3, 2002.

PUBLIC SERVICE COMMISSION OF WYOMING

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STEVE FURTNEY, Deputy Chair

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KRISTIN H. LEE, Commissioner

(SEAL)  
Attest:

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STEPHEN G. OXLEY, Chief Counsel